IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1473 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAGANBHAI S PATEL

Versus

DISTRICT AGRICULTURAL OFFICER

Appearance:

MR PS PATEL for Petitioner

MR Mehul Vakharia for Respondent No. 1

Mr. L.R. Pujari, AGP for Respondent No. 2

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 26/06/2001

ORAL JUDGEMENT

In this Special Civil Application, the petitioner has been challenging order dated 2.2.1989 produced at Annexure "B" whereby an amount of Rs. 954.30 ps. is sought to be recovered from the petitioner.

2. It is the say of the petitioner that he was appointed as Agricultural Assistant in the year 1960. That vide order dated 5.4.1983 passed by respondent No.2,

petitioner was deputed to Sabarkantha District Panchayat. That the petitioner gave joining report to respondent No.1 but he was not allowed to join duty on 11.4.1983. By order dated 12.4.1983 respondent No.1 has intimated to respondent No.2 that the petitioner was not allowed to join duty. The petitioner was allowed to join duty on 21.7.83 by respondent No.1. It is not disputed that the impugned order Annexure "B" came to be passed stating that the petitioner committed default inasmuch as he did not join duty. Respondent No.1 has in affidavit-in-reply in clear terms stated that respondent No.1 sent a telegram dated 14.4.1983 and also wrote a letter dated 18.4.1983 to Joint Director of Agricultural (Vistaran), Vadodara, (respondent No.2) whereby he was informed that no post of Agricultural Assistant was vacant and therefore the petitioner cannot be accommodated in the set-up of Sabarkantha District Panchayat. Thus it will be seen that the petitioner was not allowed to join duty by respondent No.1 as there was no vacant post available in the set-up of Sabarkantha District Panchayat. The non-availability of vacant post in Sabarkantha District Panchayat is a matter inter-se between the respondents and petitioner and he cannot be faulted for the same.

3. In view of the above facts the issuance of the impugned notice seeking to recover Rs. 954.30 ps. cannot be said to be justified and legal in any manner. Respondent No.1 therefore could not have issued recovery notice against the petitioner.

4. In the result the impugned notice Annexure "B" dated 2.2.1989 deserves to be quashed and set aside. Accordingly Annexure "B" dated 2.2.1989 seeking to enforce recovery of Rs. 954.30 is hereby quashed and set aside. The petition allowed accordingly. Rule made absolute.

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